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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,507	04/09/2004	David Hershberger	60,210-219	9822

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EXAMINER

GILBERT, ANDREW M

ART UNIT PAPER NUMBER

3767

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,507

Applicant(s)

HERSHBERGER ET AL.

Examiner

Andrew M. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22,24,26-29,31 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22,24,26-29,31 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/1/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Acknowledgements

1. This office action is in response to the reply filed on 7/17/2006.
2. Applicant has amended claim 22 and added dependent claim 41. Claims 1-21, 23, 25, 30, 32-40 have been cancelled.
3. Thus, claims 22, 24, 26-29, 31, and 41 remain pending for consideration.

Information Disclosure Statement

4. The information disclosure statement (IDS) submitted on 9/1/2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 22, 24, 26-29, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Ray et al (6109895). Ray et al discloses a tube set (Fig 2) for use with a surgical pump and tool system to supply irrigation fluid to a tool of the system, said tube set including an inlet tube (202) having first and second ends (Fig 2); an outlet tube (601) having first and second ends (Fig 6); a cassette (300), said cassette having a front, first and second spaced apart opposed sides that extend from said front, and a rear opposite said front that extends between said sides, said rear having a forwardly

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directed wall (Fig 3); a compressible tube (202, 309) having opposed ends that extends across an outer surface of said forwardly directed wall such that said compressible tube is compressible against said forwardly directed wall, wherein said inlet tube second end is connected to one end of said compressible tube (Fig 2-3, 6, 12) and said outlet tube first end is connected to the other end of said compressible tube (Fig 2-3, 6, 12); and a locking finger (306) attached to said first side of said cassette, said locking finger having a base (305, Fig 5) that extends from said first side adjacent said rear; a tip (306; Fig 5) spaced from said base and located adjacent said front; an outer surface adjacent said first side (Fig 4-5); an a retention feature (306) located between said base and said tip and formed on said outer surface for engaging a retention feature integral with the surgical pump (104; Fig 5); wherein said locking finger is pivotally attached to said first side to move towards said second side so that when said locking finger is so pivoted, said locking finger retention feature disengages from the surgical pump retention feature (Fig 4-5, 103; 104; 305; 306); wherein said first side of said cassette is a side wall and said locking finger is formed integrally with said side wall and seats in an opening defined by said side wall (Fig 4-5, 103; 104; 305; 306); wherein said locking finger retention feature is a tab (Fig 4-5, 103; 104; 305; 306) formed with a beveled top (Fig 4-5, 103; 104; 305; 306) such that extending from said base to said tip, the height of said tab relative to said locking finger increases (Fig 4-5, 103; 104; 305; 306); wherein said second side wall is formed with a recess (Fig 4) that is positioned to subtend the area subtended by said locking finger tip; a raised tab (Fig 4-5, 103; 104; 305; 306) integral with said locking finger disposed over said tip, said tab being spaced from said retention

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feature (Fig 4-5, 103; 104; 305; 306); wherein said inlet tube, said outlet tube, and said compressible tube are separate tubes (Fig 2, 4, 6, 12).

7. Claims 22, 24, 26-29, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Monk et al (5433588). Monk et al discloses a tube set (Fig 3) for use with a surgical pump and tool system to supply irrigation fluid to a tool of the system, said tube set including an inlet tube (Summary; 71) having first and second ends (Summary); an outlet tube (Summary; 73) having first and second ends (Summary); a cassette (11), said cassette having a front, first and second spaced apart opposed sides that extend from said front, and a rear opposite said front that extends between said sides, said rear having a forwardly directed wall (Fig 1); a compressible tube (81) having opposed ends that extends across an outer surface of said forwardly directed wall such that said compressible tube is compressible against said forwardly directed wall, wherein said inlet tube second end is connected to one end of said compressible tube (Fig 3) and said outlet tube first end is connected to the other end of said compressible tube (Fig 3); and a locking finger (107) attached to said first side of said cassette, said locking finger having a base (96, 97) that extends from said first side adjacent said rear; a tip (103, 104) spaced from said base and located adjacent said front; an outer surface adjacent said first side (Fig 2); an a retention feature (106, 107) located between said base and said tip and formed on said outer surface for engaging a retention feature integral with the surgical pump (Fig 1-3); wherein said locking finger is pivotally attached to said first side to move towards said second side so that when said locking finger is so pivoted, said locking finger retention feature disengages from the surgical pump retention feature

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(Figs 1-3; Summary; col 3, Ins 40-col 4, ln 44); wherein said first side of said cassette is a side wall and said locking finger is formed integrally with said side wall and seats in an opening defined by said side wall (Fig 1-2); wherein said locking finger retention feature is a tab (Fig 1-2) formed with a beveled top (107, 108) such that extending from said base to said tip, the height of said tab relative to said locking finger increases (Fig 1-2); wherein said second side wall is formed with a recess (Fig 1-2) that is positioned to subtend the area subtended by said locking finger tip; a raised tab (107, 108) integral with said locking finger disposed over said tip, said tab being spaced from said retention feature (Fig 1-2); wherein said inlet tube, said outlet tube, and said compressible tube are separate tubes (Fig 3, Summary).

8. Claims 22, 24, 26-29, 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Kablik et al (5928257). Kablick et al discloses a tube set (Fig 1) for use with a surgical pump and tool system to supply irrigation fluid to a tool of the system, said tube set including an inlet tube (203) having first and second ends (Fig 1, 32); an outlet tube (204) having first and second ends (Fig 1, 32); a cassette (14), said cassette having a front, first and second spaced apart opposed sides that extend from said front, and a rear opposite said front that extends between said sides, said rear having a forwardly directed wall (Fig 31-32); a compressible tube (202) having opposed ends that extends across an outer surface of said forwardly directed wall such that said compressible tube is compressible against said forwardly directed wall, wherein said inlet tube second end is connected to one end of said compressible tube (Fig 32) and said outlet tube first end is connected to the other end of said compressible tube (Fig

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32); and a locking finger (222) attached to said first side of said cassette, said locking finger having a base (230) that extends from said first side adjacent said rear; a tip (223) spaced from said base and located adjacent said front; an outer surface adjacent said first side (Fig 32); an a retention feature (224) located between said base and said tip and formed on said outer surface for engaging a retention feature integral with the surgical pump (182, Fig 38); wherein said locking finger is pivotally attached to said first side to move towards said second side so that when said locking finger is so pivoted, said locking finger retention feature disengages from the surgical pump retention feature (Fig 38, 182, 223); wherein said first side of said cassette is a side wall and said locking finger is formed integrally with said side wall and seats in an opening defined by said side wall (Fig 32); wherein said locking finger retention feature is a tab (224) formed with a beveled top (Fig 32, 38) such that extending from said base to said tip, the height of said tab relative to said locking finger increases (Fig 38); wherein said second side wall is formed with a recess (Fig 32) that is positioned to subtend the area subtended by said locking finger tip; a raised tab (224, Fig 38) integral with said locking finger disposed over said tip, said tab being spaced from said retention feature (Fig 38, 223); wherein said inlet tube, said outlet tube, and said compressible tube are separate tubes (Fig 32).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ray et al or Monk et al or Kablik et al in view of Troutner et al (4692138). Ray et al or Monk et al or Kablik et al discloses the invention substantially as claimed except for wherein said front, rear, and first and second sides substantially enclose said inlet and outlet tubes between said front and said rear. Ray et al or Monk et al or Kablik et al teaches that it is known to have the front, rear, and first and second sides substantially enclose said inlet and outlet tubes between said front and said rear (Fig 2) for the purpose of enclosing the tubes in a serpentine flow through the apparatus. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sides as taught by Ray et al or Monk et al or Kablik et al with the sides that enclose the inlet and outlet tubes as taught by Ray et al or Monk et al or Kablik et al for the purpose of enclosing the tubes in a serpentine flow through the apparatus.

Response to Arguments

11. Applicant's arguments with respect to claims 22, 24-29, 31-40 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Gilbert whose telephone number is (571) 272-7216. The examiner can normally be reached on 8:30 am to 5:00 pm Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Andrew Gilbert

KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

